

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

April 23, 2003

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams
Absent: None
Staff: Faubion, Heyden, McNeely, Pereira, and Lindeman

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers.

**IV.
APPROVAL OF MINUTES
April 9, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of April 9, 2003.

Motion to approve the minutes of April 9, 2003 as written.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Commissioner Lalwani thanked citizens for attending Congressman Mike Honda's legislative update last Monday, the combined effort by the Milpitas Chamber of Commerce and Milpitas Rotary. Next Tuesday, April 29, there will be a small group tour for Milpitas citizens interested in visiting India at 555 Los Coches Avenue. If anyone is interested they can notify Commissioner Lalwani.

Tambri Heyden, Planning Manager, reminded Commissioners that the current Subcommittee rotation effective April 1st includes Commissioners Galang and Lalwani as members and Commissioner Nitafan the alternate.

**VI.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

Motion to approve the agenda as written.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, and 2 and 4
and 5**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar. There were no changes made.

Commissioner Giordano advised that she will abstain from Consent Item No. 5 due to the close proximity of her property in relation to that of the applicant. **City Attorney, Kit Faubion**, advised it is not necessary for Commissioner Giordano to leave the dais when the item is discussed.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, and 4.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1, 2, and
continue Item No. 4 to the
May 14, 2003 Planning
Commission Meeting**

Motion to close the public hearing on Consent Item Nos. 1 and 2 and continue Item No. 4 to the May 14, 2003 Planning Commission meeting.

M/S: Lalwani/Galang

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, and 5 and continue Item No. 4 to the May 14, 2003 Planning Commission meeting.

***1 HILLSIDE SITE & ARCHITECTURAL REVIEW (P-SA2003-3):** Request to revise previously approved plans for a not-yet-constructed hillside residence, deleting the previously approved basement with skylights, and adding a patio cover. (APN: 42-30-009). Applicant: Kevin Chiang. Project Planner: Annelise Judd, 586-3273 (Recommendation: Recommend approval with conditions to the City Council)

***2 SITE AND ARCHITECTURE APPROVAL (P-SZ2003-3):** Request to construct a 4,000 square foot commercial building, with associated parking and landscape modifications at 100 North Milpitas Boulevard. (APN: 028-12-021). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

***4 "S" ZONE APPROVAL NO. P-SZ2002-6, USE PERMIT P-UP2002-35 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. P-EA2003-1:** Request for a mixed-use development consisting of 101 residential units and 6,000 SF of retail that exceeds the height and setback regulations for the MXD-TOD district and includes vacation of a portion of Weller Land and approval of the related Negative Declaration for the property located at 230 North Main Street (APN 028-24-017 and -018). Applicant: Apton Properties, LLC, Project Planner: Staci Pereira, 586-3278. (Recommendation: Continue to May 14, 2003)

***5 SITE AND ARCHITECTURE AMENDMENT (P-SA2003-45):** request to install a 6-foot high property fence along the rear and sides of the property in the hillside area at 638 Quince Lane (APN 029-59-009). Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

M/S: Williams/Galang

AYES: 6

NOES: 0

ABSTAIN: Commissioner Giordano abstained from voting on Item No. 5

VIII. PUBLIC HEARING

3. VARIANCE (P-V2003-1); Applicant: Chad and Jessica Leffler

Chair Hay opened the public hearing on Agenda Item No. 3.

Ms. Heyden presented the request for a variance to allow a 2-foot encroachment of a residential addition into the required side yard of an existing, legal non-conforming residence located at 123 North Gadsden Drive (APN: 029-18-009). This site currently contains a 1,306 sq. ft. single-story residence with conforming rear and front set backs. The side yard set back adjacent to the garage is 5 feet and current code requires 6 feet. The side yard setback on the alternate side is 6 feet. The total is only 11 feet. and both side yard setbacks must equal no less than 13 feet. This is a non-conforming structure situation of 2 feet.

Ms. Heyden reported the applicant wishes to construct a 496 square foot addition in front of the home to encroach 2 feet. within the required side yard of the subject site to align it with the existing nonconforming structure. Commissioners' meeting packets contain a site plan. Dotted in red is the 8 foot. setback that is required for this addition in order for it to comply with the current requirements. The five required findings for variance approval of City code mirrors State law. They are: 1) alleviate a hardship, due to irregularity of lot, the topography or surrounding circumstance; 2) variances should not be granted except in the case of hardship, 3) if variance is denied, conditions or circumstances present shall not deprive benefits to property owner, 4) variance should not be used to correct a circumstance generally applicable to entire district and 5) variance must not injure other parcels in the district or be detrimental to the public welfare. Ms. Heyden reviewed the findings as written in the staff report.

Staff's recommendation is to deny this variance for the findings stated.

Discussion ensued wherein **Commissioner Nitafan** offered an alternate way the applicant could change the plans. Ms. Heyden confirmed that the total setback of both sides of the home must be 13 ft. The setback on the garage side should not be less than 6 feet. Ms. Heyden concluded that Commissioner Nitafan's suggestion would meet the code.

In response to **Commissioner Williams**, Ms. Heyden confirmed the chimney is excluded from the overall analysis.

In response to **Commissioner Lalwani**, Ms. Heyden stated that she could not verify if the photographs provided by the applicant, that are referred to as the neighbor's house with the same addition, are the same as what the applicant is requesting. The information would have to be field verified.

In response to Chair Hay, Ms. Heyden reported that State law governs variances; language in State law is general, and the City code sets forth these 5 specific findings, which go above and beyond State law as cities are allowed to do. All factors do not have to be present in order to grant the variance. City Attorney Faubion, after reviewing the Zoning Ordinance, confirmed that the 5 standards guide the Planning Commission in the granting of the variance. The variance must be applicable to a hardship with the lot not the circumstances of the family.

Chair Hay invited the applicant to address the Planning Commission.

Chad Leffler, the applicant, stated that his family is increasing and he is trying to expand his 3-bedroom residence. He wants to keep a uniform look with the other houses in the neighborhood. He believes that coming in 2 feet makes the residence look too busy and that the resale value would probably not be as much as the residence next door. He stated his blueprints were drawn up before October 2002 when the code changed and he was waiting for refinance funds, then, he ran into the variance problems. His personal preference is that the residence would look better if it had straight lines. If this cannot be done, then he will have to scrap the project. He expressed thanks for the Commission's consideration of his project.

There were no other speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Agenda Item No. 3.

M/S: Williams/Giordano

AYES: 7

NOES: 0

Motion to deny variance request P-SA2003-19 based on variance requirements and in accordance with staff's findings and recommendation to deny the variance.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

IX. NEW BUSINESS

Chair Hay opened Agenda Item No. 6.

6. "S" ZONE AMENDMENT NO. P- SA2003-3: Staff Contact: Staci Pereira, 586-3278.

Commissioner Nitafan abstained from discussion and voting on this item due to a conflict of interest. His business is 300 feet from this property. Chair Hay excused Commissioner Nitafan for the remainder of the evening. Commissioner Nitafan left the meeting at 7:36 p.m.

Staci Pereira, Jr. Planner, presented a request for building and site improvements associated with converting a residence to a commercial building for medical office use at 429 South Main Street (APN 086-10-022).

Ms Pereira stated that the project as proposed does not meet the following standards for the mixed-use district: 1) setbacks, 2) parking, and 3) site access, vehicular access and pedestrian access. She referred to the staff report.

The project as proposed does not meet the following standards for the mixed-use district:

1) Setback requirement: The existing front setback is 29 feet., the required Midtown minimum is 8 feet and maximum of 15 feet. The existing south side setback is a zero lot line; the north side is 18 feet. The required Midtown side yard setback is 10 feet.

2) Parking: There are 6 parking spaces proposed, 5 on site and one on the street in front of the building. Based on one space per 225 gross square feet of floor area, the parking requirement is 8 spaces, which staff believes the site can accommodate.

3) Site access/utilities: There are utilities on site above ground; Midtown requires underground utilities. The applicant has stated that no means exist to gain access on an adjacent property to share an ingress or egress on site. There must be vehicular and pedestrian access to the site. Converting from residential use to commercial use requires a commercial solid waste account, service and commercial bins. As proposed, there is concern BFI and delivery trucks cannot turn around safely on site and must back into Main Street. Staff also has safety concerns with bicyclists and pedestrians using the sidewalk on Main Street.

Ms. Pereira stated she has discussed several potential solutions with the applicant regarding the driveway width and access. One solution staff suggested may be to redesign the rear of the site to allow a turnaround so that BFI and delivery trucks would not have to reverse out of the site. This would require removing the rear accessory building, shifting parking east, paving the rear of the site and constructing a trash enclosure at the northwest corner of property.

Of the 8 Midtown Design Guidelines, which the project does not meet, two of them can be met with the redesign of the project.

The project as proposed conflicts with the General Plan, which requires new projects to be bicycle and pedestrian friendly. The project does not meet the intent of the "S" Combining District. The project does not meet the intent of the Midtown Plan because it is in conflict with Community Goal 2 and Policy 5.1, which establish a pedestrian-oriented mixed-use district that is centered on Main Street, consistent with the Design Standards and Guidelines. The project does not comply with the applicable Design Standards and Guidelines, unless the site is redesigned.

Based on these findings, staff recommends denial of the project as proposed.

In response to Commissioner Giordano's question how setbacks required in the Midtown Plan specifically address existing areas that have non-conforming setbacks, Ms. Pereira stated that an applicant can deviate from the Development Standards with a Use Permit, however the applicant is not proposing to add onto the existing building. Therefore, it doesn't have to meet the Development Standards. Commissioner Giordano asked what was the philosophy, when the Midtown Plan was being developed, to enable buildings of this nature to be converted and fold into the Midtown Plan. Ms. Heyden reported that as with any parcel in the City, if you have a nonconforming structure, that doesn't meet the setback requirements, it doesn't matter if you change the use of the building; you are allowed to continue to use that structure. Unless there is an addition to the structure, the issue of it being nonconforming doesn't really come into play because only the addition would need to meet the current setback requirements.

Commissioner Giordano posed the question, "If Milpitas did not have the Midtown Specific Plan, and this project came forward, would it meet or would it not meet the setback requirements?" Ms. Pereira said she was not aware of the setbacks for the C-2 district, the previous zoning for the property.

Commissioner Giordano asked if the parking requirement could be modified if this is going to be more of a medical clinic use. She suggested that maybe long-term parking would not be necessary because this type of business would be more of an "in-out" clientel. Ms. Pereira stated that the applicant could request a parking reduction, which would require a trip generation study that would be included with the project application. She stated parking was not an issue with the applicant.

In response to several questions from Commissioners, Ms. Pereira indicated that typically, the pick up for solid waste is once a week, but it depends on the use. This structure has always had a residential account so BFI does not access the property.

Commissioner Galang asked how often would they have pick up. Ms. Pereira indicated that typically the pick up is once a week, but it depends on the use. This structure has always had a residential account so BFI does not access the property.

In response to Commissioner Giordano, Ms. Pereira stated that 500 – 600 square feet. of the residence was converted into a salon and has remained. This project request is to expand the commercial use throughout the entire structure and discontinue the residential use. Staff spoke with the applicant, in March, to discuss compliance with the design guidelines. Of the 8, they do not comply with 2 guidelines, but are willing to make the changes.

Regarding the issue of the width of the driveway, Ms. Pereira confirmed that although it should be 36 feet for a commercial standard driveway, staff is agreeing that 24 feet. would be sufficient. The project does not propose to widen the driveway to 24 feet. To widen the driveway would require removing a utility pole and undergrounding. Ms. Pereira referred to Exhibit S. in the Commissioners' packets. Commissioner Lalwani asked what has the applicant said about moving the utility pole; is it okay with the utility company to move it? Ms. Pereira indicated that staff has not gotten into discussions about that with the applicant.

In response to Commissioner Lalwani regarding the solid waste issues, Ms. Pereira indicated that in order to accommodate BFI trucks to turn around on site and not have to back up into the street would require the applicant to remove the rear building and shift the parking east in order to allow a larger area for a 3 or 5 point turn. Commissioner Lalwani asked if the applicant is not agreeing to this, to which Ms. Pereira replied staff has not gotten into discussions with the applicant.

Ms. Pereira confirmed to **Commissioner Galang** that according to the City's Building Code requirements, it is mandatory to provide a handicap space and reported the Midtown requirements. This property does not have the space to provide the parking on the street in front of the building. In answer to another question, Ms. Pereira stated that staff supports the front entrance of the building being used as an emergency entrance and that wouldn't be a problem if the frontage were in compliance with the Midtown Plan. Ms. Pereira stated that the Midtown Plan allows for freestanding signs, only at major site entries, which this project complies with. Staff has suggested minor upgrades for the sign to compliment the exterior of the building.

Chair Hay invited the applicant to address the Planning Commission.

The applicant, Nichole Thanh-Cam Vecchi thanked the Commission for reviewing the project and hoped tonight's meeting could resolve the outstanding issues. She introduced her husband, Hein N. Nguyen and their attorney, Kirsten Power, who specializes in land use and redevelopment law. She said this project has a lot to offer to the City because with the closing of the San Jose Medical Group, Milpitas lost over 20 physicians, of which at least 7 of those primary care providers are women.

The applicant addressed two of the concerns Planning raised; and solid waste and site access. She stated that by OSHA law they have account with BFI for medical waste to be picked up. She said in a letter dated in July, Planning indicated they wanted curbside pickup but after meeting in February with the City's Solid Waste management and Planning staff, she agreed to City staff's request to have solid waste pickup remain curbside. Then later in March, staff was requiring onsite pick up. Then after April 15 letter, she received a call which said that in order to do onsite pickup, the applicant would need to knock out the existing, legal, non-conforming back building in order to make space for the trucks to turn around. Ms. Vecchi referred to her Exhibit C regarding a proposed hammer turnaround. She stated that the hammer turnaround is more than adequate for the trucks to turn around.

Chairperson Hay expressed concern with the items the applicant was presenting and asked if staff had an opportunity to review what had been given to the Planning Commission and asked if it was new information. Staff responded that they had not.

The applicant stated she called staff about these items and she reiterated to the Planning Commission some of the communications she had with Planning staff regarding the issues. The applicant stated she mentioned to staff on Monday, that there is plenty of land on the property for BFI trucks to turn around and her architect called Ms. Pereira to talk about the hammer turnaround. The applicant said it is her opinion that the hammer turnaround is a more practical way of solving this issue so that they do not have to knock out the existing, legal, nonconforming back building. She explained the hammer turnaround and said she was told that it is not adequate. Therefore, that is why she is presenting this solution to the Commission to see if it is adequate.

In response to Chair Hay, the applicant stated that her architect came up with the drawing this morning. Chair Hay indicated that staff has not had an opportunity to review it.

Ms. Vecchi referred to the 2nd issue, which she stated was thoroughly discussed on March 28 with Engineering and Ms. Pereira. She referred to Engineering's drawing that Ms. Pereira showed earlier; this was Engineering's proposal to solve the problem of safely approaching the driveway. She further stated that she would comply with the suggestions of Engineering, however, she and her husband feel that removing or relocating the existing utility pole wouldn't enhance the safety issue. She stated that Engineering's suggestion back on March 18 left the utility pole in place and they did not say it was a safety issue then. She said she did not learn about the request to remove the pole until April 15. She stated she spoke with all their consultants including civil engineering. The architect, a local paving company and PG&E, all of whom felt that with a slight shift of the flare southward, that they wouldn't have to remove the utility pole to enhance safe access to the driveway. What Engineering suggested back on March 18 would adequately meet that safety issue.

Ms. Heyden reported that the exhibit, to which the applicant is referring, was provided as only a courtesy to the applicant; it was not distributed to the Planning Commission because staff is recommending denial. The document was provided as an indication to the applicant of what kinds of requirements would need to be done if this property were converted for commercial purposes. It is not a completed product and is not considered to be a public final product at this time.

Ms. Vecchi referred to the last document *Special Conditions from Planning Staff* and stated they would comply with all of it except the removal of the back building, and removal of the utility pole. She read Condition Nos. 8 and 11 on pages 2 and 3 of the document. She said that these two items are asking them to give their neighbor and City Government carte blanche to their property, which is a constitutional issue.

The applicant's attorney, Kirsten Powell, 255 W. Julian Street, San Jose spoke on the two issues, Conditions Nos. 8 and 11. She said she understands Ms. Heyden's comments but in the event that the Planning Commission is comfortable with the changes her client is proposing, the (outstanding) concerns are Nos. 8 and 11.

Ms. Powell stated that Condition No. 8 requires her clients to agree to consent to any future assessment district that may be imposed. Pursuant to the Streets and Highways Code and Proposition 218 of the State Constitution, all property owners are allowed to vote to approve or deny an assessment district and that by requiring this of them at this point, without informing them what those assessment districts may or may not be, is an infringement on their rights and should not be included in the conditions.

Condition No. 11 is a requirement to grant their neighbors cross access easements. Given the proposal that you have in front of you, for the use that is intended, the requirement of an easement dedication seems to be excessive and there is no nexus for that. The applicants are more than willing to work with their neighbors in the event that cross access issues are necessary. But given the site and surrounding sites, it seems very unlikely that would happen. She stated she and her clients would oppose that as an excessive requirement and asked that those 2, (Nos. 8 and 11) be eliminated from the conditions for approval.

During discussion and in answer to Commissioner Lawlani, Ms. Vecchi stated the neighbor to the south is a resident/owner Joann Souza and her mother. She said they approached them about future access easement. Should they also wish to have commercial access it would be beneficial to both parties to cooperate now so they could also have access when they need it. However, they flat out denied any cooperation for an easement. Ms. Vecchi said she asked the owner to the south if she was considering converting her property to commercial use and that owner said she was not thinking about that and was not interested in mutual access.

In response to Commissioner Lalwani regarding if staff thought the southern property would be developed later, Ms. Pereira stated that given the age of the property, staff would assume so, but there are no proposals nor interest expressed from that property owner at this time.

Ms. Powell stated that the buildings on her client's property are also built either on or next to the property line so a shared access really wouldn't work, given the configuration of the buildings on both properties.

Chair Hay stated that there is no recommendation for approval with conditions. These conditions were not given to the Planning Commission before tonight, except for what the applicant has just provided for the purposes of approval; there has not been an opportunity for review. Chair Hay asked Ms. Faubion to address and advise on the two issues brought up by the applicant's attorney.

Ms. Faubion stated that she also has not had an opportunity to review the conditions, and perhaps Ms. Heyden can clarify that these conditions are not being offered to the Commission as conditions of approval or potential approval, they are sort of a document in progress. (Earlier in the meeting, Ms. Heyden had already clarified this.) Ms. Faubion stated it is her belief that both of these conditions derive from policies in the Midtown Plan. Condition No. 11 recognizes there is a great deal of parceling that can inhibit redevelopment of some of the sites and she believes there is a policy for combining driveways, sharing access and trying to minimize the number of driveways. Policy No. 11 also seems to be derived from the General Plan policies.

In response to Chair Hay, Ms. Faubion clarified that an assessment district does have its own set of rules and yes; it would require a vote of the property owners to assess themselves.

Ms. Vecchi summarized the key things she is asking the Planning Commission for help today: 1) consider the proposal for the hammer turnaround to a more practical solution for the BFI trucks to exit safely. 2) Consider letting her adopt what Engineering had suggested on the 18th of March, which was a 24-foot, new driveway, with a 4 foot. flare with a slight shift over so they don't have to remove and underground the utility pole. Ms. Vecchi contacted PG&E to get an idea of the costs for that. PG&E informed her it is a very involved process of maybe 6 months to 1 year. Although they could not quote a cost, they indicated it would be a minimum of \$10,000. Also, PG&E indicated the City must first approach PG&E; the applicant cannot approach PG&E. Ms. Vecchi stated that her architects, civil engineer and paving companies are of the opinion that with a slight shift, the applicant may not have to remove the utility pole. Ms. Vecchi stated she is not contesting the issues raised by the Planning Division and is not trying to get around the safety issue but she said she is proposing a more practical solution to the issue.

Regarding Condition Nos. 8 and 11, Ms. Vecchi stated those would have to be worked out between the two attorneys. She said she believes there should be some limitations as to what is being asked of her.

Mike McNeely, City Engineer, asked if he could clarify the driveway item. He explained that the applicant is advocating an offset driveway. He referred to the plan showing the driver coming southbound from left to right. If the driveway is moved south, as shown in red on the plan, then the driver trying to make the right turn would need to make more than a 90 degree turn. The driver would have to snake around the pole and that is the potentially dangerous situation that staff would like to avoid. That is why staff is recommending that the pole be moved northerly or placed underground. Mr. McNeely confirmed that the drawing provided earlier to the applicant, and to which the applicant alluded to, was not a final product; it was a work in progress that depicts the way the driveway would be located.

In response to Commissioner Lalwani's question, Mr. McNeely stated that he would have to talk with staff about the 4 foot. flare, but the flare is a standard flare as shown on the plan. The 4 foot. flare would help to increase the width of the driveway but there would still be a potential for danger; there would be cars coming southbound and having to double back with opposing vehicles coming out of the driveway. He added that staff has not seen nor reviewed the drawing regarding the applicant's plan for the hammer turnaround.

Ms. Vecchi said that, in terms of a safe approach of the driveway, if you look at the suggestions on the special conditions from Planning, it said it would help address that issue, but it is also based upon an increase of volume projected in 10-20 years. With the economic downturn, she said she doesn't see in the foreseeable future that a rise in the traffic volume is an issue.

Chair Hay invited anyone in the audience to address the Planning Commission.

Don Peeples, 529 South Main Street, stated that he was representing himself in addressing the Planning Commission and he does not have any professional relationship to the project. He expressed his opinion that the Midtown Plan is very much for new development but it also has gray areas. He believes this type of business is what the people want on Main Street and which is certainly an improvement over the former use and is a positive influence on Main Street. He believes that to solve this requires creative thinking for everyone so that something positive is quickly done there and public safety is accommodated.

Ms. Heyden stated that this is the first site in Midtown that the Planning Commission has seen that is a redevelopment site. The redevelopment of this site is more challenging and more difficult than if you were to demolish the buildings and reconstruct buildings in the proper location, proper setbacks, and proper size. In this case staff has to work around some situations. Additionally, review for staff is tougher.

Ms. Heyden stated that the March 18 comments were shared with the applicant during the process. There is an evolution with project review; once comments are received back from the departments. Information sharing occurs internally to discuss conflict. The review by Planning staff is never complete until the day the (Commission) packet is released. Ms. Heyden stated that the hammer turnaround mentioned by the applicant has not been reviewed; it was mentioned to staff verbally. Until staff can see it on paper, because the site is so tight, it would need review by staff as a group to allow staff to generate the proper special conditions. She said that staff's intention regarding the conditions the applicant presented this evening, was to provide something for the applicant so they could begin to get some idea of the costs associated with redeveloping this site to meet the zoning code regulations, safety considerations and meet the intent of the Midtown Design Guidelines.

Regarding traffic volume, Ms. Heyden stated that when a site is approved and constructed, it is there for a long time. Therefore, current traffic volumes as well as projected future volumes 15-20 years from now must be considered. Staff's job is to advise and look at the future to ensure that this site has the proper conditions and will be safe and well-designed.

Chair Hay stated that this application is premature. It appears there is agreement on some areas where it didn't first appear there was agreement. Also, it appears there needs to be some additional discussion on some areas. Chair Hay said he is uncomfortable with denying or approving a project when it is as incomplete as this one is. The City Attorney has not had an opportunity to review the design that was brought forth this evening by the applicant. As part of that, the Planning Commission would expect complete staff review and review by the City Attorney to evaluate the conditions.

Chair Hay requested a response from BFI regarding the pertinent issues; a proposal has made which he believes is worthy of evaluation by BFI, as an alternative to what staff has been proposing.

Commissioner Williams expressed concern regarding growth of future traffic in the area. Because Milpitas is a pass through City for traffic through the area at all hours of the day, there is a real need to understand the traffic patterns on Main Street.

Commissioners agreed this application is premature and agreed they are not ready to vote for denial or approval at this time. There was consensus the best approach is to have staff and the applicant revisit the outstanding issues once again. Commissioner Giordano stated she believes all Commissioners agree this project is a welcomed use to the community and agree they want to revitalize the Midtown area.

Motion to continue this item to the next Commission meeting or whenever appropriate when staff and applicant have reached agreement. The key areas to be revisited are: 1) the main item -- that we maintain the architectural design that the Midtown Plan was specifically designed to do. 2) The easement issue as brought forth by the (applicant's) Attorney, that there is or is not a legal problem. -- that needs to be taken to staff and the applicant's attorney. 3) The hammerhead turnaround; both BFI and City staff need to agree that it would work. 4) Parking: can the parking be satisfied and agreed upon. 5) The PG&E utility pole issue needs to be resolved. 6) Traffic: It is necessary to make sure that there is no concern regarding that issue.

M/S: Giordano/Lalwani

Commissioner Giordano stated she would like to see these issues brought back and would hope this project would go forward.

Chair Hay stated that because the Midtown area is a main priority, this item should be advertised, whether it comes back as a public hearing or not.

AYES: 7

NOES: 0

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:42 p.m. to the next regular meeting of May 14, 2003.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VICTORIA LINDEMAN
Recording Secretary Pro Tem